

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 35423/35515

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| STATE OF IDAHO, |) | 2009 Unpublished Opinion No. 447 |
| |) | |
| Plaintiff-Respondent, |) | Filed: May 5, 2009 |
| |) | |
| v. |) | Stephen W. Kenyon, Clerk |
| |) | |
| BRIANNA N. DEIHL, |) | THIS IS AN UNPUBLISHED |
| |) | OPINION AND SHALL NOT |
| Defendant-Appellant. |) | BE CITED AS AUTHORITY |
| |) | |

Appeal from the District Court of the Seventh Judicial District, State of Idaho, Madison County. Hon. Brent J. Moss, District Judge.

Orders revoking probation and ordering into execution previously imposed sentences, affirmed.

Molly J. Huskey, State Appellate Public Defender; Heather M. Carlson, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Lori A. Fleming, Deputy Attorney General, Boise, for respondent.

Before PERRY, Judge; GUTIERREZ, Judge;
and GRATTON, Judge

PER CURIAM

Brianna N. Deihl was charged with and pled guilty to grand theft, I.C. §§ 18-2403(1), 18-2407(1)(b)(1)(8) and fraudulent use of a financial transaction card, I.C. §§ 18-3124(1), in case number 35515 and was sentenced to a unified term of five years with two years determinate. The district court suspended the sentence and placed Deihl on probation for five years. Deihl subsequently violated the terms of her probation and was charged with two new crimes. Pursuant to a plea agreement, Deihl pled guilty to fraudulent use of a financial transaction card, I.C. § 18-3124(1), and the state agreed to dismiss a charge of misappropriation of personal identification information in case number 35423. The district court revoked Deihl's probation and ordered the underlying sentence into execution in case number 35515 and imposed a unified

term of five years, with two years determinate, in case number 35423. The district court retained jurisdiction in both cases. After Deihl completed her rider, the district court suspended the sentences and placed her on probation for five years. Deihl again violated the terms of her probation and was charged with new crimes. The district court revoked Deihl's probation and ordered the underlying sentences into execution on both cases. Deihl filed an Idaho Criminal Rule 35 motion for reduction of sentences, which the district court denied. Deihl appeals, contending that the district court abused its discretion by revoking her probation and ordering her sentences into execution.

It is within the trial court's discretion to revoke probation if any of the terms and conditions of the probation have been violated. I.C. §§ 19-2603, 20-222; *State v. Beckett*, 122 Idaho 324, 326, 834 P.2d 326, 328 (Ct. App. 1992); *State v. Adams*, 115 Idaho 1053, 1054, 772 P.2d 260, 261 (Ct. App. 1989); *State v. Hass*, 114 Idaho 554, 558, 758 P.2d 713, 717 (Ct. App. 1988). In determining whether to revoke probation, a court must examine whether the probation is achieving the goal of rehabilitation and consistent with the protection of society. *State v. Upton*, 127 Idaho 274, 275, 899 P.2d 984, 985 (Ct. App. 1995); *Beckett*, 122 Idaho at 325, 834 P.2d at 327; *Hass*, 114 Idaho at 558, 758 P.2d at 717. The court may, after a probation violation has been established, order that the suspended sentence be executed or, in the alternative, the court is authorized under Idaho Criminal Rule 35 to reduce the sentence. *Beckett*, 122 Idaho at 326, 834 P.2d at 328; *State v. Marks*, 116 Idaho 976, 977, 783 P.2d 315, 316 (Ct. App. 1989). A decision to revoke probation will be disturbed on appeal only upon a showing that the trial court abused its discretion. *Beckett*, 122 Idaho at 326, 834 P.2d at 328.

Applying the foregoing standards, and having reviewed the record in this case, we cannot say that the district court abused its discretion either in revoking probation or in failing to reduce the sentences. Therefore, the orders revoking probation and directing execution of Deihl's previously suspended sentences are affirmed.